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Attorneys for Axis Reinsurance Company

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

REFCO, INC., et al.,

Debtors.

-----X
AXIS REINSURANCE COMPANY

Plaintiff,

-against-

PHILLIP R. BENNETT, LEO R. BREITMAN,
NATHAN GANTCHER, TONE GRANT,
DAVID V. HARKINS, SCOTT L. JAECKEL,
DENNIS A. KLEJNA, THOMAS H. LEE,
SANTO C. MAGGIO, JOSEPH MURPHY,
RONALD L. O'KELLEY, SCOTT A SCHOEN,
WILLIAM M. SEXTON, GERALD SHERER,
PHILIP SILVERMAN, ROBERT C. TROSTEN,

Defendants.

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**DESIGNATION OF ITEMS IN RECORD ON
APPEAL AND STATEMENT OF ISSUES PRESENTED**

Axis Reinsurance Company ("Axis"), the Plaintiff in the above-captioned action and the Appellant on appeal, by counsel, hereby respectfully designates the following items to be

Chapter 11

Case No. 05-60006 (RDD)

(Jointly Administered)

Adversary Proceeding No.
07-01712 (RDD)

included in the record on appeal, all of which are submitted as Exhibits hereto, and herein sets forth a statement of the issue it intends to present on appeal:

ITEMS DESIGNATED

1. Axis Reinsurance Company Securexcess Policy RNN 506300 (the "Axis Policy"), attached hereto as Exhibit A.

2. U.S. Specialty Insurance Company Directors, Officers and Corporate Liability Insurance Policy 24-MGU-05-A10821, attached hereto as Exh. B.

3. The Adversary Action Complaint (without exhibits) filed by Axis on May 23, 2007, attached hereto as Exh. C.

4. Director Defendants' Motion to Dismiss Complaint of Axis Reinsurance Company, (without exhibits), filed July 12, 2007, attached hereto as Exh. D.

5. Motion by Defendants Bennett, Trostan and Grant to Compel Advancement and Dismiss the Complaint or, if the Complaint is Not Dismissed, to Stay Further Proceedings Against Them Pending the Outcome of Their Criminal Trial, filed July 12, 2007, attached hereto as Exh. E.

6. Memorandum of Law in Opposition to Defendants' Motion to Dismiss the Complaint or, if the Complaint Is Not Dismissed, to Stay Further Proceedings Against Them, attached hereto as Exh. F.

7. Director Defendants' Reply to the Objection of Axis to Motion to Dismiss, filed August 27, 2007, attached hereto as Exh. G.

8. Reply Brief in Further Support of Motion by Defendants Bennett, Trostan and Grant to Compel Advancement and Dismiss the Complaint or, if the Complaint is Not Dismissed, to Stay Further Proceedings Against Them Pending the Outcome of Their Criminal Trial, filed August 27, 2007, attached hereto as Exh. H.

9. The Answer and Counterclaims of Phillip Silverman, filed in the United States Bankruptcy Court, Southern District of New York, on July 13, 2007, attached hereto as Exh. I.

10. The Answer and Counterclaims of Sexton and Sherer, filed in the United States Bankruptcy Court, Southern District of New York, on July 13, 2007, attached hereto as Exh. J.

11. The Amended Answer and Counterclaims of Klejna and Murphy, filed in the United States Bankruptcy Court, Southern District of New York, on July 31, 2007, attached hereto as Exh. K.

12. The transcript of August 30, 2007 oral argument on the Application for a Preliminary Injunction Ordering Advancement of Defense Costs and Motion to Dismiss, attached hereto as Exh. L.

13. The August 31, 2007 Order of Judge Robert D. Drain granting Defendants' Motion to Dismiss the Axis Complaint, attached hereto as Exh. M.

14. The Form 8-K filed by Refco, Inc. (signed by Movant Klejna) with the United States Securities and Exchange Commission on October 11, 2005 (with exhibits), attached hereto as Exh. N.


15. The March 6, 2006 letter from Wayne E. Borgeest, Esq. to Pam Sylwestrzak, attached hereto as Exh. O.

16. The Warranty Letter signed by Bennett on behalf of all insureds under the Axis Policy on January 21, 2005, attached hereto as Exh. P.

ISSUE PRESENTED

Was the Bankruptcy Court correct in granting Defendants' Motion to Dismiss Axis's Complaint - - which sought a determination that there is no coverage for the Underlying Actions under the Axis Policy - - based on the supposed overlap of issues and facts to be determined in the declaratory judgment coverage action and the Underlying Action currently pending before Judge Lynch in the District Court, while retaining the Counterclaims brought by certain Defendants who are effectively seeking the same relief as Axis was, specifically, a declaration as to whether there is coverage under the Axis Policy with respect to the Underlying Actions?

Dated: September 20, 2007

Signed: 

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